HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 6969 OF 1997

DATED: 7.2.2007

Between:

B. Naga Raju and others

...

Petitioners

and

The Regional Manager, APSRTC, Nellore

...

Respondent

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No.6969 of 1997

ORAL ORDER:

The petitioners 25 in number seek regularization of services as Conductors Grade.II/Drivers Grade.II from the date of completion of 240 days of service reckoned from the date of their initial appointment with consequential benefits.

Admittedly, the petitioners were appointed in the Nellore Division of the APSRTC as casual conductors and drivers on several dates during 1990 to 1992 (particulars are set out in Annexure 1 to the writ petition). From 1992 onwards, the services of the petitioners were "de-casualized" after each of them had put in 2 to 3 years of continuous service in casual status. On de-casualization, they were extended regular pay scales.

Asserting continuous service from the date of their initial appointment as casual drivers and conductors and seeking regularization on that basis, with effect from their initial date of appointment on casual basis, some of the casual drivers and conductors filed W.P.No.12132 of 1984. The writ petition was allowed by a learned single Judge of this court by the judgment dated 20.6.1988,

directing the Corporation to declare the petitioners to be in service on regular basis from the dates of their joining duty and to give them consequential benefits. Thereagainst, the Corporation filed W.A.No.705 of 1995. The appeal was dismissed and the order of the learned single Judge was confirmed but with modification, directing the Corporation to regularize the services from the date of continuous appointment as defined under Section 25-B of the Industrial Disputes Act, 1947 instead of the date of their initial appointment. Following the judgment in W.A.No.705 of 1995, several writ petitions were disposed of.

In some of the matters, the Corporation approached the Supreme Court by way of Special Leave. Leave was granted and the Civil Appeals considered and disposed of by the judgment in ***DIVISIONAL MANAGER, APSRTC AND OTHERS V. P. LAKSHMOJI RAO AND OTHERS (1.)***. The Apex Court judgment elaborately analyzed the chronology of events culminating in the several judgments of this court. Analyzing one of the judgments by this court (in an appeal filed against the judgment in W.P.No.8070 of 1990, which was disposed of by the appellate bench on 24.7.1995), the Supreme Court in ***Lakshmoji Rao*** (1 supra) observed:

> ***"11. It is difficult to comprehend the ratio of the above decision. While purporting to clarify the order passed in the writ petition by the learned Single Judge, the Division Bench imported a totally alien concept of continuous service within the meaning of Section 25B of the I.D. Act which was for the special purpose of applying the***

provisions as to lay off and retrenchment contained in Chapter V-A of the Act. Moreover, the order in the writ appeal is as vague as it could be. The expression 'date of continuous appointment' makes no sense. Even if it is taken that the said wording has been inaccurately used for the words 'continuous service', still, the direction is unintelligible. Continuous service within the meaning of Section 25B-for how long ? Nothing has been specified. In this state of things, in W.P.No. 24263 of 1998, a learned single Judge proceeded on the basis that as per the decision in W.A.705/1995, the employees were entitled to seek regularization with effect from the date of initial appointment, thus making the clarification given by the Division Bench virtually otiose.

12. The problem was compounded by another Division Bench decision of the High Court in Writ Appeal No.1108 of 1997 APSRTC v. P.T. Rao, 1998 (2) ALT 447. That was an appeal against the order of the learned Single Judge directing regularization keeping in view the directions given in Writ Appeal No.705 of 1995 (supra). The learned Judges after referring to the decision of this Court in State of Haryana v. Piara Singh, AIR 1992 SC 2130, observed:

> ***"Thus, it is clear that the High Court cannot issue a blanket direction to regularize the services of the employees on completion of a particular period. If we examine the cases of the respondents-workmen here in the light of the principles laid down by the Supreme Court in State of Haryana v. Piara Singh (supra), we have to hold that the order of the learned Single Judge requires modification."***

13. Having said so, curiously, the following order was passed in the next paragraph which is the operative part of the judgment:

> ***"Therefore, the order of the learned Single Judge is modified to the effect that the respondents-workmen are entitled to the regularization of their services from the date of their initial appointment to such posts on completion of 240 working days. If there are number of claimants seeking regularization, the same can be done only in a phased manner. Insofar as the claim of the workmen for arrears or back wages is concerned, having regard to the facts and circumstances of this case, we hold that the respondents-workmen are not entitled to the same.***
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> ***With the above modification, the writ appeal is disposed of."***

14. The direction given in paragraph 5 is not quite consistent with what was held in the previous para of the judgment after referring to the law laid down in Piara Singh's case. The concept of 'continuous service' for a period of one year as per Section 25B of the I.D. Act has been imported by this Division Bench also. Moreover, it is difficult to reconcile the two directions in Para 5 (contained in the first two sentences). Perhaps, what the learned Judges meant was that the employees' claim for regularization should be considered on completion of 240 working days and if they are otherwise eligible, they should be absorbed on regular basis to the extent of vacancies available. In the event of such regularization, it would take effect from the date of initial appointment.

15. It is difficult to follow the logic or the reason behind the law laid down by the Division bench. If the regularization has to take place in a phased manner subject to availability of vacancies etc., the question of according regular status to the employees right from the date of initial appointment on daily-wages does not arise. Moreover, if the services of respondents in the writ appeal have already been regularized and they claim regular status from the date of initial appointment, the High Court should have addressed itself to the specific question whether

the regularization after some period of daily wage service was legally correct and recorded a finding thereon. The observations made and the directions given have only added to the dimension of controversy rather than solving the problem. How and in what manner the said judgment in [1998 (2) ALT 447], which is sought to be relied upon by the appellants, was implemented is not known. No details are available in this regard. However, it is difficult to construe the judgment in the said writ appeal as upholding the contention of the appellants excepting the passing observation that the regularization could be done in a phased manner."

The Supreme Court concluded that the law laid down or the directions issued in various writ petitions or writ appeals are legally unsustainable for the plurality of the reasons recorded in para (16) of the ALD report. The Apex Court also pointed out that no service rule or regulation or any other principle of law was shown which inheres a right in the employees to claim regularization from an anterior date i.e. from the date of initial appointment as daily wage employees. However while recording the ratio that as consequence of its analysis, the judgments under appeal ought to be set aside and the writ petitions filed in this court dismissed, the Supreme Court observed that the Corporation had also failed to question the adverse decisions by filing appeals in appropriate time and had allowed many judgments to become final and therefore to avoid a peculiar situation and anomalies that might otherwise ensue, ordered that if any of the conductors, junior to the respondents of a relevant division or region have got the benefit of

seniority and regularization or are entitled to get the same by virtue of the judgments that have become final, then the respondents who are seniors to them shall be given the same benefit on the same principle.

This aspect of the Supreme Court judgment is not the ***ratio decidendi*** which constitutes the binding law under Art.141 of the Constitution. It is a direction moulding the relief. Such a direction is not treated to be a part of the ratio in accordance with the theory of precedents. It is the law declared by the Supreme Court, which is authoritative and commands conformity.

There has been a clear and paradigmatic shift in the law and principles relating to the regularization of irregular and unlawful initial appointments. A Constitution Bench of the Apex Court in ***SECRETARY, STATE OF KARNATAKA AND OTHERS V. UMA DEVI AND OTHERS (2.)***, after an extensive analysis of the empirical principles governing recruitment to public services and of several decisions of the Supreme Court on that aspect of the matter, has re-stated the principles governing regularization of the services and in the context of Constitutional and legal doctrine. The Apex Court in ***UMA DEVI's*** case (2 supra) held that the State should not be allowed to depart from the normal rule and indulge in temporary employment in permanent posts; that regular recruitment should be insisted upon and only in a contingency may ***ad hoc*** appointment be made in a permanent vacancy. However, this should soon and expeditiously be followed up by a regular recruitment. The court also held that appointments to non-

available/non-sanctioned posts should not be taken up for regularization. The distillate of precedential authority as explained in ***UMA DEVI's*** case is that appointments made without following the due process of recruitment or the rules for appointment do not confirm any rights on the appointees and the court cannot direct their absorption or regularization or re-engagement or that they be made permanent. The apex court also declared that decisions which run counter to the principles settled in ***UMA DEVI'S*** case or in which directions running counter to what has been held in ***UMA DEVI,*** stand denuded of their status as precedents.

It is all the more compelling in the light of the ratio in ***UMA DEVI*** that credence ought not to be given to mere directions in judgments even of the Supreme Court earlier to ***UMA DEVI's*** case on areas settled by the ***Uma Devi*** ratio. The law declared in ***UMA DEVI*** has put at rest the precedential conflict and regulates the exercise of curial discretion to issue a Mandamus to direct regularization of irregular appointments made to posts which are not sanctioned at the time of such appointments.

In the case on hand, as pointed out in ***P. LAKSHMOJI RAO'S*** case (1 supra), there were no sanctioned posts of drivers or conductors as on the date of the initial recruitment as casual drivers and conductors. Even in the case on hand, there is no material on record to justify an inference that the petitioners were appointed to regular and sanctioned posts of drivers and conductors though on a casual

basis. The mere fact that the same selection committee or the same composition of the selection committee, if any, had also considered the petitioners' candidature for casual employment, does not invest in the petitioners a status higher than that of casual employment.

In the absence of a sanctioned post and an advertisement specifying that the recruitment is for a regular post, a plurality of public interest values are adversely impacted in regularization of recruitments ***ad hoc*** made. What has been advertised is casual posts of drivers and conductors. As a consequence of such advertisement, even persons desiring employment in the APSRTC, an instrumentality of the State, would not have applied on account of the fact that the employment was casual. There was thus a denial of equal opportunity for public employment.

In the absence of a sanctioned post, a public authority has no executive power to make regular recruitment because such a course of conduct would be subversive of administrative and fiscal discipline and therefore subversive of the long-term health of a public corporation. Regularization of longstanding temporary employment is one value. Recruitment and conformity with the Constitution and the laws is another value. These values could co-exist but are unfortunately brought into conflict because of irrational and vagrant recruitment practices adopted by public corporations. Factual circumstances are brought about where employees are continued for long in casual status and clamour for regularization.

The case on hand however does not fall within the

above matrix. The petitioners having been recruited on casual basis initially were de-casualized within 2 to 3 years. What they lose now is only a seniority of 2 to 3 years. They have achieved regular employment. In view of the law declared in ***UMA DEVI*** (2 supra), no Mandamus can be issued to regularize their services with effect from the dates of their initial irregular and casual employment.

On the aforesaid analysis, no relief could be granted. There are no merits in the writ petition. The writ petition is accordingly dismissed. No costs.

GODA

RAGHURAM, J
Date: 7.2.2007
cvm

1. 2004 (3) ALD 1 (SC)
2. (2006) 4 SCC 1